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Charles Darwin University

Final Examination

Family Name						
Given Name/s						
Student Number						
Teaching Period	Semester 1, 2018					

LWZ223 – Property Law	DURATION	
	Reading Time:	10 minutes
	Writing Time:	180 minutes
INSTRUCTIONS TO CANDIDATES		
<p>1.1 The examination has two sections. Answer each section in separate answer books.</p> <p>Section A Suggested Time: 90 mins. Compulsory Problem Questions: Answer BOTH questions. Each question is worth 15 marks. (30 marks in total)</p> <p>Section B Suggested Time: 90 mins. Choice of Short Essay Questions: Answer 2 of 3 questions. Each question is worth 15 marks. (30 marks in total)</p> <p>1.2 Note that questions ARE of equal value.</p> <p>1.3 Read ALL questions carefully.</p>		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u> The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
Any calculator is permitted		
Any handwritten material is permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
Any printed material with the exception of CDU Library books	2 x 16 Page Book 2 x Scrap Paper	

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Section A

Compulsory Problem Questions: Answer BOTH questions. Each question is worth 15 marks. (30 marks in total)

Question One (15 marks)

A weekly market is held in Darwin on Saturday mornings that gives local producers, artisans and foodies a place to meet to sell and exhibit their products. Stallholders enter into a written agreement with the market authority. The land is otherwise vacant and unused on the days the market is not held.

The terms of the agreement include the following points:

1. The stallholder is entitled to exclusive occupation and use of the specified stall area(s) for the period of one year from the date of this Agreement. (A diagram is attached showing the number and location of each stall.)
2. The stallholder is able to access the stall area at all times and with permission of the market authority can store market equipment such as vans and furniture at the applicant's risk.
3. If the stallholder does not use the stall area for a market day, permission can be sought to assign or sublet the stall area to another suitable applicant on market days.
4. Rent of \$150 a month is payable one month in advance at the beginning of each month.
5. Either party may terminate this Agreement at any time by giving one month's notice in writing. However, the Agreement can be terminated by the Market Authority without notice if the stallholder fails to pay rent, or fails to repair any damage to the stalls, or otherwise misbehaves.

A client who has recently started up a food van is seeking your advice as to whether the agreement is a lease or a licence so he can apply for the correct insurance.

Task: Address each of the above points of the agreement separately and analyse whether it is indicative of a lease or licence, and then draw a conclusion as to whether the agreement overall comprises a licence or a lease arrangement. Identify in your advice any in rem or in personam rights arising from the agreement. Support your answer with case law.

Question Two (15 marks)

Nic and Stu live in Lyons, Darwin. They want to move to NSW and have put their house on the market for sale. The Darwin market has slowed down recently and they expect to wait a long time for the right buyer.

The following encumbrances are registered on title:

1. There is a mortgage over the property for \$350,000 to Bank A
2. An easement in favour of the next door neighbouring lot for access to the local council reserve.
3. A caveat placed over the property by Stu's ex-wife, Sarah pending the resolution of a family law matter.

The easement is fenced separately to Nic and Stu's yard, and runs from the neighbour's adjoining backyard to the local reserve along the back portion of the block. The area is approximately 6 m x 1.5 m.

The mortgage will be paid out when the property is sold using the money from the sale.

Two separate parties inspect the house at the first open inspection, and both are interested in purchasing the property. Sally requires finance approval for a mortgage from Bank B to make an offer. Guy expects to be in a position to purchase the property pending the sale of his unit.

Sally, has come to you for advice on the following points:

A Easement:

1. Can she build a pool house on the easement to store some pool equipment? **(1 mark)**
2. If and when the next door neighbour sells their property, does the easement change? **(2 marks)**

B Purchase and contracts

1. If she makes an offer on the property then signs a contract, is she then bound to purchase the property? What sort of interest does she have in the property at the point of exchange of contracts? **(2 marks)**
2. What would happen if Sally signed the contract, and then Guy made a higher offer on the property that was accepted by Nic and Stu? Would Sally have any recourse against Guy or Nic and Stu? **(5 marks)**

C Caveat and Title

1. What is a caveat and how is it removed from the title? Can Sally remove the caveat? Does the caveat bind Nic or just Stu? **(3 marks)**
2. Does the caveat need to be removed before the property is sold to Sally? Who in the above scenario is likely to insist it is removed? **(2 marks)**

Remember to support your answer with law and state any assumptions you make.

SECTION B

Choice of Short Essay Questions: Answer 2 of the 5 questions below. Each question is worth 15 marks. (30 marks in total)

1. A remainder interest and a reversionary interest are both future interests. How would you advise a client to take advantage of such an interest and also what steps could they take to protect their interest?
2. How did the decision in *Mabo (no 2)* change the Australian property law system with respect to native title and the common law? Comment on the development of the recognition of Native Title in Australia, and make particular comment on how the common law continues to influence the legislative regime.
3. How do sections 10 and 5 of the Law of Property Act (NT) operate to protect parties' intentions to deal with and dispose of interests in land. Outline an example where these sections may be invoked, and explain the implications.
4. There are exceptions to indefeasibility. What are the consequences of the application of the exceptions to indefeasibility? The exceptions of fraud and the rights *in personam* (or personal equities) exceptions arise in different circumstances. Outline possible scenarios to explain each exception and how to distinguish these exceptions from each other.
5. Co-ownership relationships exist for most proprietary interests including registered proprietors and mortgages. Why is joint tenancy and tenants in common differentiated by the common law and equity when most of consequences of owning a property interest with more than one person are the same? Outline the differences and similarities between the two types of co-ownership in your response.